

1. **Contract Documents:** In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
 - Form DA 146a, a copy of which attached hereto as Appendix A. The parties agree to abide by such terms as if the same were set forth herein;
 - Written modifications to the executed contract;
 - Written contract signed by the parties;
 - The RFP, including any and all amendments; and
 - Contractor's written proposal submitted in response to the RFP as finalized.
2. **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful contractor.
3. **Notices:** All notices, demands, requests, approval, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts
900 SW Jackson St, Room 652S
Topeka, Kansas 66612-1212

Or to any other persons or addresses as may be designated by notice from one party to the other.

4. **Termination for Cause:** The Director of Procurement and Contracts may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - the Contractor fails to make delivery of goods or services as specified in this contract;
 - the Contractor provides substandard quality of workmanship;
 - the Contractor fails to perform any of the provisions of this contract, or
 - the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Procurement and Contracts shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Procurement and Contracts shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

5. **Termination for Convenience:** The Director of Procurement and Contracts may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Procurement and Contracts shall determine that the termination is the best interest of the State of Kansas. In the event that the Director of Procurement and Contracts elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
6. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in

the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

7. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.
8. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.
9. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

10. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

11. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, condition and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.
12. **Proof of Insurance:** Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Procurement and Contracts.
13. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

14. **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.
15. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.
16. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.
17. **Hold Harmless:** The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

18. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse the State for such property's loss or damage caused by Contractor, normal wear and tear expected.
19. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
20. **Retention of Records:** Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal

agencies shall have access to and the right to examine records during the contract period and during the five (5) business days at no cost to the state.

21. **Antitrust:** If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
22. **Modification:** This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
23. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
24. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
25. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
26. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
27. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.
28. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.
29. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.
30. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.
31. **Debarment of State Contractors:** Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any

employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.

32. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

The contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

33. **Worker Misclassification:** The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.
34. **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
35. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.
36. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct Procurement and Contracts. These taxes shall not be included in the Contract. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

37. **Accounts Receivable Set-Off Program:** If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

38. **Definitions:** A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".
39. **Definite Quantity Contract:** This is a close-ended contract between the Contractor and the State to furnish a predetermined quantity of a good or service in a given period of time.
40. **HIPAA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of member's information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement.

41. **Off-Shore Sourcing:** If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Procurement and Contracts and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Procurement and Contracts, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.
42. **On-Site Inspection:** Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract.
43. **Prices:** Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.
44. **Payment:** Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statue requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for

payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in this contract.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

49. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
50. **Implied Requirements:** All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.
51. **Acceptance:** No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.
52. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
53. **Software Code and Intellectual Property Rights:** As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order issued under this Contract, shall become the sole property of the State of Kansas. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specification, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software or software code and related intellectual property to the state entity for which it was developed.
54. **Data:** Any and all data required to be provided at any time during the contract term shall be made available in a format as requested and/or approved by the State.
55. **New Materials, Supplies or Equipment:** Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard ad of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.
56. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

SECOND AMENDED CONTRACT
(October 1, 2014-September 30, 2015)

The Secretary for the Kansas Department for Aging and Disability Services (KDADS) enters into a contract with the SouthWest Kansas Area Agency on Aging (SWKAAA) to serve as the statewide Aging and Disability Resource Center (ADRC)ⁱ for the period October 1, 2014 through September 30, 2015.

I. COVERED POPULATION

Individuals of all ages, disabilities and income levels are included. The populations will include older individuals and individuals with disabilities, family caregivers and other individuals planning for future long-term care services and supports needs. The ADRC shall serve as a resource for individuals of all payer sources, including those eligible for publically funded programs and individuals with private resources.

II. OBJECTIVES

- A. The objectives of the ADRC are to:
- i. Help people conserve their personal resources, maintain self-sufficiency and delay or prevent the need for institutional care;
 - ii. Empower individuals to make informed choices about services and supports;
 - iii. Streamline access to long-term services and supports by serving as an agency with a "No Wrong Door" approach to community services;
 - iv. Assist Medicaid eligible individuals to choose their KanCare or Program of All-Inclusive Care for the Elderly (PACE) provider;
 - v. Refer to the wide array of in-home, community-based, and institutional services and programs designed to assist older individuals, and individuals with disabilities, and their families;
 - vi. Disseminate timely and accurate information about the availability and quality of services supporting older individuals and individuals with disabilities;
 - vii. Determine functional eligibility for long-term supports and services;
 - viii. Provide individuals with appropriate information, referrals and connection to services;
 - ix. Identify any gaps in services;
 - x. Establish effective partnerships with the health care community to ensure individuals have access to the appropriate services for better health outcomes;
 - xi. Coordinate and provide all required data and reports for an analysis of ADRC program effectiveness; and
 - xii. Provide the State with formal monitoring reports in a manner and at intervals required by contract.
 - xiii. Refer customer to correct HCBS waiver.

III. ADRC REQUIREMENTS

- A. The SWKAAA shall serve as the state's designated ADRC. The ADRC shall ensure that it has written agreements with the collaborating agenciesⁱⁱ whereby they agree to comply with the terms contained herein.
- B. Cooperation: The parties agree to fully cooperate with each other in the performance hereunder, and will execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Contract.
- C. The ADRC shall execute a revised Business Associates Agreement (BA Agreement) (revised June, 2013) provided by KDADS

- D. Any Subcontractorⁱⁱⁱ and each collaborating agency shall sign a BA agreement with the ADRC. No payment shall be made to either the ADRC or a Collaborating Agency until it has received an executed BA Agreement.
- E. The ADRC and the Collaborating Agencies, organizations and individuals shall be key stakeholders in each region's local access planning efforts, and activities to improve local system access must be underway and evident.
- F. The ADRC shall have written agreements with local critical pathway providers such as hospitals, physicians' offices, nursing homes, CMHCs, CDDOs, state psychiatric hospitals, state developmental disability hospitals and ICF/MRs that include:
 - i. An established process for identifying individuals and their caregivers who may need transition support services;
 - ii. Protocols for referring individuals to the ADRC for transition support and other services; and
 - iii. Education for facility administrators and discharge planners about the roles and responsibilities of the ADRC.
- G. The ADRC shall work with the State to become the Local Contact Agencies (LCAs) to provide transition service information for institutionalized individuals who indicate they wish to return to the community via the Minimum Data Set (MDS) 3.0 Section Q assessment and Community Transition Opportunity (CTO) referrals.
 - i. All residents referred through the CTO process must be met within seven (7) calendar days from the date of the referral or provide sufficient documentation for delay or cancellation of referral.
- H. The ADRC shall establish strong partnerships with the State Health Insurance Assistance Program (SHIP), Senior Medicare Patrol (SMP), Adult Protective Services (APS), Benefit Outreach and Enrollment Centers, and other programs instrumental to ADRC activities. Examples of other important programs and partners to cultivate include Area Agencies on Aging, Centers for Independent Living, Alzheimer's disease programs, Developmental Disabilities Councils, Information and Referral/2-1-1 programs, Long-Term Care Ombudsman programs, housing agencies, transportation authorities, State Mental Health Planning Councils, One-Stop Employment Centers and other community-based organization.
- I. The ADRC shall demonstrate collaboration with key partners in the following ways:
 - i. Medicaid
 - 1. Create relationships with KanCare MCOs and all Medicaid agency(ies), local and Statewide, to educate and discuss the role of each partner in the eligibility determination process and information sharing policies; and
 - 2. Participate as partners or key advisors in other state long term support and services system reform initiatives (e.g. Money Follows the Person initiatives.)
 - ii. Aging and Disability Partners
 - 1. Ensure formal service standards, protocols for information-sharing and cross training across all operating partners is in place.
 - iii. Stakeholders
 - 1. Provide and document evidence of strong collaboration with other programs and services instrumental to ADRC activities;
 - 2. Provide documentation of how collaborating agencies are involved in the implementation and activities of the ADRC; and
 - 3. Partner with KDADS to collaborate with stakeholders at the state and local

levels.

- J. The ADRC shall provide a comprehensive call and walk-in center that covers the entire state, accessible to all individuals to respond to requests for Information, Referral and Assistance (I &R/A).
- K. I&R/A Service Definition:
- i. The I&R/A service conducts an interview in which the inquirer has a one-to-one interaction with an I&R/A specialist. The interview process consists of active listening and effective questioning to determine the needs of the inquirer, clarifying the need, identifying appropriate resources, selecting appropriate delivery mode(s), making referrals to organizations capable of meeting those needs, and providing enough information about each organization to empower the inquirer to make an informed choice. In situations where formal services are unavailable, the I&R/A service engages in problem solving to help the inquirer identify alternative strategies (ex. Informal supports). All I&R/A Service shall be completed using the KDADS developed Standard Information, Referral and Assistance Form. The I&R/A service can range from a limited response (such as organization contact information) to a detailed description of community service systems, and agencies policies and procedures. Follow up is strongly encouraged for inquirers who are at risk, and/or vulnerable and in situations where the I &R/A specialist believes the inquirers do not have the necessary capacity to follow through and resolve their problem. Additional assistance in locating or accessing services may be needed. The I&R/A service should be made available for inquirer's to access in person, by phone or electronic means to best meet the inquirer's needs. Inquirers are encouraged to call back if the information proves incorrect, inappropriate or insufficient to link them with the needed services.
 1. All I &R/A requests shall be responded to within two (2) business days.
 2. Each I&R/A inquiry or contact shall be recorded in the state's Management Information System (MIS) including demographic information:
 - name (first and last)
 - county of residence,
 - age,
 - program type,
 - contact method,
 - inquirer needs must be identified
 3. The ADRC and each Collaborating Agency shall have at least one I&R/A specialist that is CIRS-A certified by the Alliance of Information and Referral Systems (AIRS) and maintain certification while employed as an I&R/A specialist.
- L. The ADRC location, including the main location and any branch or satellite location(s) shall:
- i. Be clearly identifiable by signage that is visible from a distance, easy to find and readily accessible to the public;
 - ii. Posted on directories in the building;
 - iii. Have the capacity to serve individuals with disabilities.
 - iv. Be accessible to individuals with physical, cognitive, hearing and/or visual impairments;
 - v. Be in compliance with the Americans with Disabilities Act (ADA)
 - vi. Have a reception area where the public is greeted by an individual;
 - vii. Have a reception area large enough to accommodate people of all ages, disabilities with dignity and respect;
 - viii. Have in the reception area an accessible display space for fliers, pamphlets and other

information materials, arranged so that individuals can easily reach materials;

- ix. Have security space for secure storage of confidential information
- x. Feature a telephone system with a dedicated number or numbers which include a toll free number.
 - 1. The telephone shall be answered using "Aging and Disability Resource Center".
 - 2. The telephone system shall have the ability to transfer calls internally within the ADRC and permit staff to connect callers directly to other agencies, emergency services, and hard-to-reach organizations without requiring the caller to place a separate call (Warm Transfer).
 - 3. The telephone system shall have a method to leave a message after hours and shall refer callers to an emergency number.
- xi. Have access to public restrooms that are clearly signed, accessible, and easily available for use by ADRC consumers.
- xii. Have an e-mail address to be well publicized and published on the State's website.
- xiii. The ADRC shall respond to email contacts in the same manner as any other written request

M. Hours of Operation:

- i. The call center I & R/A services shall be supplemented by on-site IRA services for anyone who walks into any ADRC location (either ADRC or Collaborating Agency).
- ii. The call center hours of operation shall abide by the following requirements:
 - 1. Provide its services during hours in a manner convenient to the public.
 - 2. Information and assistance shall be available continuously on all days and during all hours when businesses and agencies are normally open.
 - 3. Be available through the lunch hour and at other times most convenient to the public.
 - 4. Have the capacity for its staff to be available after hours for appointments when necessary.
 - 5. Be available by public transportation; and
 - 6. Have adequate parking.

N. The ADRC shall link consumers with needed services and supports, both public and private, through appropriate referrals (including referrals made by Warm Transfer) to other agencies and organizations including KanCare and PACE organizations. The ADRC shall work collaboratively with KanCare and PACE providers.

O. The streamlined eligibility determinations for public programs component of an ADRC is the ability to serve as a single point of entry to all publicly funded long-term supports, including those funded by Medicaid, Medicare, the Older Americans Act (OAA), and other state and federal programs and services. This requires ADRCs to have the necessary protocols and procedures in place to facilitate an integrated and/or fully coordinated approach.

P. Tracking Eligibility Status

- i. The ADRC shall use the KDADS approved "case log" feature to record all contacts with the consumers or any attempts to contact a consumer and comply with all applicable policies or IMs. Until the State's MIS has been reconfigured, the KDADS and the ADRC shall utilize the recently developed KDADS approved spreadsheet for interim use. Use of either the KDADS-approved "case log" feature in the MIS or the KDADS approved spreadsheet satisfies this requirement.
- ii. The ADRC shall follow up with consumers who have pending eligibility and/or are determined ineligible for publicly funded long term care services. Follow-up shall contact (by phone or in-person) with the consumer to explain other programs and/or services that

may be available. Unless continued follow-up is requested by the consumer, once the initial follow-up has occurred, this obligation shall be satisfied;

- iii. The ADRC shall communicate functional eligibility information to the Kansas Department of Children and Families (DCF), via the designated communication method, and appropriate Managed Care Organization (MCO) if applicable;
- iv. The ADRC shall communicate functional assessment status via the designated KDADS form with the customer. Such form may be mailed or hand-delivered to the customer thereby putting them on notice of the functional assessment outcome.
- v. The ADRC shall inform DCF and the KDADS of any consumer changes discovered by ADRC staff, e.g., change of address, death, hospitalization, relocation to a nursing home or relocation out of state through designated processes (i.e. Form 3161). The ADRC shall also input such change into KAMIS.
- vi. The ADRC shall complete the functional assessments process and any documentation needed to meet HCBS/PASRR (Pre-Admission Screening and Resident Review) criteria including, but not limited to
 - 1. Verify necessity of assessments (ie. Valid assessment already completed; terminal illness, etc.);
 - 2. Obtain required signatures and forms;
 - 3. Provide a copy of assessment to consumer and/or facility
 - 4. Provide necessary documentation to KDADS
- vii. The Parties agree to use best efforts in adhering to all such federal, state and administrative laws, regulations, policies or information memos including pertinent and relevant sections of the KDADS' Field Service Manual (FSM) with regard to providing services to eligible consumers as required under this contract that are current as of the date of the signing of this contract. Any changes, modifications or amendments to such laws, regulations, policies or information memos that have a direct or substantial fiscal impact on ADRC's ability to provide said services or requires ADRC to provide services in addition to those negotiated and agreed to in this contract may constitute a major change in the contractual agreement necessitating the parties to further negotiate applicability to and/or implementation by ADRC including further negotiation of additional compensation to ADRC. While the KDADS cannot guarantee additional funding, it agrees to meet in good faith with the ADRC and have such discussions.

The parties further acknowledge that KDADS is developing, with input from stakeholders, a new functional eligibility instrument. While the new instrument has yet to be implemented, is anticipated that rollout may commence in FY 15. The Parties further acknowledge, in light of this move towards the use of a new functional eligibility instrument, certain provisions of this Contract may need to be renegotiated. While the KDADS cannot guarantee additional funding, it agrees to meet in good faith with the ADRC and have such discussions.

In the event renegotiation is required herein, the Parties agree to timely meet and negotiate such issue(s) in good faith. In the event, however, that the issues cannot be resolved and termination of the Contract may be an option, the Party desiring to terminate shall give the other party and DoA thirty (30) calendar days advance written notice of such proposed termination.

- viii. The ADRC shall comply with the Adverse Incident Reporting procedures by utilizing the state's MIS to record all adverse incidents while working with HCBS consumers.

- Q. The ADRC shall provide the service of Options Counseling (OC). The OC session is conducted in the location of the consumer's choice with a preference for face-to-face interaction. OC is a proactive and interactive process that provides a supportive relationship that empowers consumers and their families to make informed choices regarding current or future long-term care needs. OC places an emphasis on relationship building, counseling, unbiased information and decision support. OC includes documentation of decision support provided and action steps for consumers, families and the ADRC. OC includes follow-up activities to support the consumer in their planning process. OC shall be a person-centered process that incorporates consumer preferences, strengths and culture.
- i. Follow-up is essential to the OC process and is required following every OC session. Follow-up shall be made within 7-10 business days of session or initial follow-up date unless the follow-up attempt was refused by the consumer.
 - ii. An OC "session" for purposes of this agreement means that all elements of the OC session as below are completed suitable to meet the needs of the consumer involved. Regardless of the number of contacts, or attempted contacts, all consumer needs and OC data requirements must be met for each consumer for one "session" to be billed.
 - iii. Individuals are eligible regardless of their payment source.
 - iv. Documentation and tracking of the sessions of options counseling shall be recorded in the state's MIS, including all action plans and follow-up activities within two (2) days for all sessions and follow up activities.
 - v. Data collection and reporting:
 1. The ADRC shall collect the following data:
 - Demographics of individual;
 - Date and time the initial Session took place;
 - Time of start and end of session; length of session in hours
 - Name and relationship of those involved in the session;
 - The options discussed with the individual including alternative supports and if the individual requests the risks and benefits of each;
 - The action of plan reflecting the individual's preferences,, needs, values, personal goals/desired outcomes, and definition of success; decisions made by the individual or representative, referrals made by name, date and type of support; confirmation of implementation of the plan, including enrollment or other evidence of receipt of any supports to which the individual was referred;
 - Notes for each interaction, including date of contact;
 - Notes for follow up of Options Counseling detailing contact, date, time, method and report;
 - Level of individual satisfaction with Options Counseling;
 - Number of individuals provided Options Counseling;
 - Number of individuals reengaged in Options Counseling;
 - Situation that triggered Options Counseling; and
 - Termination date of Options Counseling.
 - vi. The ADRC, subcontractors and Collaborating Agencies shall not bill for OC for other federally or state funded programs (e.g., Senior Health Insurance Counseling for Kansas (SHICK), SCA, OAA (Titles IIIB, IIIE, IIIC, IIID, CTO. etc.). In the event there have been duplicated counseling sessions, the KDADS may recoup such payments from the ADRC.

1. The CARE Level I assessment standards in the CARE policy manual include the provision of information for community based service options. In addition to such information, OC, when appropriate, may be performed at the time of a CARE Level I assessment.
- R. **Functional Assessments.** The ADRC shall provide functional assessments and reassessments assigned by the State.
- i. As a condition precedent to the dissemination and/or processing of a customer's functional assessment information by the ADRC, the proposed consumer, his or her guardian or agent acting under a power of attorney, shall execute the Authorization form. If, for whatever reason, the consumer, or their authorized representative decline to execute said document, the assessment process shall immediately cease and no further discussions, referrals, data entry of the assessment information or OC shall occur and the ADRC shall ensure that any information is securely destroyed.
 - ii. Functional assessments shall include documentation (which includes the standard intake or 3160 or email from KDADS) with required sections completed to ensure waiver program eligibility requirements prior to completing any functional assessment.
 1. Functional assessments data entered into KAMIS without a corresponding and completed documentation shall not be eligible for payment and KDADS may recoup payments made for functional assessments completed without a completed documentation.
 - Documentation must include date of referral and/or request and can be in the form of a standard intake, an uploaded 3160/3161 or email from KDADS.
 - Assurance of referral to the appropriate HCBS waiver is reviewed via designated reasonable indicators.
 2. Inappropriately completed referrals may be recouped or not be paid to ADRC.
 - iii. Functional assessments shall be conducted using the tools and processes described to the ADRC by the State, including CARE/PASRR assessments, PD, TBI, FE, MFP including initial assessments for PACE, WORK and Working Healthy, and any reassessments as required. Other functional assessments may be requested.
 - iv. The Contractor shall complete an assessment within the timeframes required for each assessment as listed below:
 1. CARE Assessments: shall be completed within five (5) working days from the date of the referral/request.
 2. Functional Assessments for FE, PD, or TBI HCBS waivers, MFP or PACE: shall be completed within five (5) working days from the date of the referral/request.
 3. WORK/Working Healthy: The ADRC shall make initial contact with a consumer within two (2) business days from the date of the referral/request. The ADRC shall administer the assessment within twenty (20) business days of the initial contact.
 4. Exceptions to Assessment Timeframes:
 - Natural Disaster et al. If this time frame cannot be met due to: natural disaster that significantly impairs the routine operation of the facility or business or another situation which, at the sole discretion of the KDADS' ADRC Program Manager, justifies the delay, the ADRC shall immediately notify the KDADS' ADRC Program Manager and provide documentation, as appropriate, for approval.
 - i. If no approved exception applies, payment for assessments that are completed late shall be reduced by ten percent (10%) for each working day that the assessment is late up to a maximum penalty of fifty percent (50%).

- Customer whereabouts unknown. If following reasonable documented efforts, the Contractor is unable to locate the customer because of the death of the consumer, customer whereabouts are unknown, unexpected hospitalization, the need for family or legal guardian participation, or another situation, which at the discretion of the KADS ADRC Program Manager justifies the delay in completion of the assessment, the penalty described in sub-section 3.d.i., above, shall not apply.
 - i. All functional assessments shall be conducted in person or in the location of the consumer's choice.
 - ii. Subcontractors may be used for the services of functional assessments as needed. The ADRC shall submit a list of all subcontractors. All subcontractors shall be held to the same requirements as the ADRC.
- S. At any time when the ADRC is a party to a contract with the KDADS for the provision of Assessment, OC and I&R/A services, the ADRC is prohibited from contracting with any Managed Care Organization (MCO) who has contracted with the Kansas Department of Health and Environment to provide healthcare services in the state of Kansas or any PACE provider providing PACE services to Kansas residents, provided, however, following written pre-approval from the KDADS, the ADRC may contract with MCO for meal services.
- T. Any transition between HCBS waivers require KDADS program manager approval prior to assessment completed.
- U. The ADRC shall comply with applicable State statutes, regulations or policies, as presently existing, or hereinafter created and/or amended, relating to this Contract.
- V. The ADRC shall comply with applicable federal statutes and regulations relating to this Contract.
- W. KDADS will implement new and/or revised policies through the agency's policy approval process. New or revised policies affecting this contract will be provided in advance and in writing via online posting with notification provided to all stakeholders affected.

IV. CONSUMER APPEALS

- A. Appeals and Roles of ADRC and KDADS:
 - i. Upon the filing of an appeal with the Office of Administrative Hearings (OAH) pursuant to the Kansas Administrative Procedure Act, as amended, the KDADS shall internally review the action of the ADRC, through its employees or contracted persons, to determine whether the action proposed or taken was correct and appropriate and whether the action should be defended through the appeal. KDADS shall have the authority and discretion, at any point during the appeal process, to determine whether the action proposed or taken was incorrect or inappropriate and to take any corrective action KDADS deems appropriate to resolve the issues on appeal. The ADRC shall, and in all of its subcontracts, require its assessors to take any corrective action directed by KDADS which KDADS, after considering the issues involved in any appeal, deems necessary.
- B. Roles During OAH Appeal Process:
 - i. KDADS's handling of Appeals; ADRC and Subcontractor Assistance. KDADS and the ADRC or Subcontractor shall have separate roles during the appeals process. KDADS shall be responsible for presenting the case in defense of the action being appealed and the ADRC shall be responsible for assisting KDADS and, its subcontracts shall require its

Subcontractors to be responsible for assisting KDADS, by supplying KDADS with the testimony and documentation which KDADS deems necessary to defend the appeal. The assessor shall not "represent" the consumer at any time during the appeal process. The ADRC shall provide KDADS, and in its subcontracts will require its Subcontractors to provide KDADS, with access to witnesses under its or the Subcontractor's control and documents (and copies of documents) in its or the Subcontractor's control or possession to prepare for and defend the appeal. The ADRC shall require fact or expert witnesses who are subject to ADRC's control and in its subcontracts shall require its Subcontractors to require fact or expert witnesses subject to the Subcontractor's control, to appear, cooperate and testify at the appeal hearings. Most often, hearings will be by phone; however some may be required in person.

1. The ADRC shall cooperate in any and all audit processes and provide information requested for any audit requests by the State or other State or Federal agencies.

V. ADRC STAFF QUALIFICATIONS AND TRAINING

A. Assessors shall meet the following requirements:

- i. Effective October 1, 2013, and continuing thereafter, all assessors engaged by the ADRC, whether as an employee or an independent contractor, shall meet the following requirements: Assessors shall have a four year degree from an accredited college or university with a major in gerontology, nursing, health, social work, counseling, human development, family studies, or related area as defined/approved by the KDADS; or a Registered Nurse licensed to practice in the state of Kansas;
- ii. The ADRC shall verify experience, education and certification requirements and maintain those records for five (5) years following termination of employment;
- iii. Assessors shall attend initial certification and recertification training sessions that cover the form(s) the assessor is being certified to complete;
- iv. An assessor that has not conducted any assessments within the last six(6) months shall repeat the training and certification requirements for the functional assessment instrument that he or she will use;
- v. KDADS shall have the responsibility for conducting all training sessions related to KDADS forms and programs, certification and recertification of all FAI assessors. KDADS shall provide training materials and written documentation of successful completion of training:
 1. Assessors shall participate in all state-mandated trainings to ensure proficiency of the program, services, rules, regulations, policies and procedures set forth by KDADS.
 2. Assessors shall complete 15 hours of training or continuing education annually, with an emphasis in aging and disability topics, including, but not limited to:
 - Annual training on the Independent Living Philosophy consisting of standardized training in history and philosophy of the National Independent Living Movement for new assessors.
 - Completion of training regarding traumatic brain injuries.
 - Completion of training regarding physical disabilities.
 3. Tracking of staff annual training or continuing education is a responsibility of the ADRC and record of all trainings shall be maintained by the ADRC.
 4. KDADS will use its best efforts to incorporate new and current technologies including, but not limited to, real-time video conferencing, webinars, and on-line modules. Additionally, the ADRC shall notify KDADS of new staff training, and KDADS will use its best efforts to provide training for new staff as needed.
- vi. At least one I &R/A specialist shall be AIRS CIRS-A certified by the Alliance of Information and Referral Systems (AIRS) and maintain certification while employed as

- an I &R/A specialist at the ADRC
- vii. ADRC assessors shall be subject to background checks and/or finger printing at the KDADS' expense.
 - viii. The ADRC shall not hire or contract with an assessor until he or she has successfully passed a background check/ finger printing as required by KDADS' Policy 8.9 entitled Security Clearance: Background Checks. For current assessors, i.e., employed or contracted, the assessor must complete and pass the background check within 60 calendar days following execution of this Agreement. Assessors shall complete a Waiver Agreement and Statement ("Waiver Agreement") and, if they have lived outside of the state of Kansas at any time during the five years previous to their being an ADRC assessor, they must further be finger printed by law enforcement. The ADRC agrees to comply with KDADS' Security Clearance Policy and the Waiver Agreement, copies of which are appended hereto as Appendices B and C

VI. QUALITY ASSURANCE AND CONTINUOUS IMPROVEMENT

- A. Quality Assurance and Continuous Improvement is a part of every ADRC system to ensure adherence to the highest standard of service, as well as to ensure public and private investments in ADRCs are producing measurable results.
 - i. Continuous Improvement
 - 1. The ADRC shall have a plan in place to monitor program quality and a process to ensure continuous program improvement through the use of the data gathered such as consumer satisfaction evaluations.
 - 2. The ADRC shall create formal processes for collecting input and feedback from consumers and their families on the ADRC's operations and on-going development.
 - 3. The ADRC shall cooperate with the KDADS in establishing protocols established to measure performance goals and indicators related to its visibility, trust, ease of access, consumer responsiveness, consumer satisfaction, efficiency and effectiveness. Once developed and implemented, the ADRC shall provide regular and ongoing reports as to outcomes and quality assurance, as directed by the State, and will additionally provide ad hoc reports and other information promptly when requested by the State. The ADRC shall work cooperatively with quality assurance staff from the KDADS including, but not limited to, site visits, silent call monitoring and customer satisfaction surveys and HCBS processes.
 - KDADS may evaluate items, including, but not limited to:
 - i. Timely data entry into state's MIS system
 - ii. Timely completion of assessments after referral
 - iii. Completion of appropriate program based on reasonable indicators
 - ii. Performance Tracking: ADRC routinely tracks service delivery and consumer outcomes and should demonstrate:
 - 1. That the ADRC serves people in different age groups, with different types of disabilities and income levels in proportions that reflect their relative representation in the community;
 - 2. That options counseling provided empowered people to make informed, cost-effective decisions about long-term care services;
 - iii. Reports
 - 1. The KDADS shall work in cooperation with the ADRC to review a list of reports to determine needed reports and deadlines, a copy of which attached hereto as Appendix C. The parties agree to abide by such terms as if the same were set forth herein. The KDADS retains the right to set requirements and deadlines if agreement cannot be reached.

2. The ADRC shall work with the State to meet all Federal reporting requirements (i.e. Semi-Annual Reporting Tool).

VII. MANAGEMENT INFORMATION SYSTEM (MIS)

- A. The ADRC shall:
 - i. Use the State's MIS.
 - ii. Work collaboratively with the State to a specified number of data elements that will efficiently and effectively meet the requirements of this Contract.
 - iii. Comply with all provisions (currently existing or subsequent amendments) of HIPAA, the HITECH ACT, The Privacy Rule and any applicable State of Kansas or federal law (statutes or regulations) relating to privacy and/or confidentiality;
 - iv. Not continue any assessment if the proposed consumer has not executed a KDADS' authorization form. The ADRC acknowledges that should an assessment continue without execution of this form, this potentially could be in contravention of the applicable HIPAA and privacy laws and could subject the ADRC to liability therein.
 - v. Ensure that its information systems are consistent with and compatible with other systems.
- B. In the event of a system outage or system deficiency, KDADS will work in good faith with the Contractor to address reimbursement-related issues and data entry needs.

VIII. GRIEVANCE PROCESS

- A. This process must include the following activities or functions:
 - i. Inform consumers of complaint and grievance policies and track and address complaints and grievances;
 - ii. Inform individuals of both the formal and informal processes for resolving complaints and grievances regarding any decision which is the responsibility of the ADRC;
 - iii. Explain who to contact if the individual has a problem with the ADRC, and resources available to assist with complaints and grievances; and
 - iv. Implement internal policies and procedures for both informal and formal solution of complaints regarding the services it provides.

IX. STATE RESPONSIBILITIES

- A. The State shall monitor compliance and implementation by:
 - i. Review reports and other deliverables provided for accuracy and completeness;
 - ii. Provide direction related to the ADRC required functions under the agreement between the State and the ADRC, including as those requirements change over time;
 - iii. Provide ongoing quality review;
 - iv. Evaluate the ADRC overall impact in the following areas:
 1. Reduction in the average time from first contact to eligibility determination for publicly-funded home and community-based services.
 2. Impact on the use of home and community-based services vs. institutional services.
 3. Customer satisfaction and utilization of OC, I &R/A and assessment services.
 - v. Provide technical assistance and tools related to the ADRC required functions;
 - vi. Provide staff attendance to the local and state ADRC Advisory or Resource Committee to facilitate their support and guidance for the projects;
 - vii. Assist the ADRC to coordinate with other state agencies and initiatives to achieve the ADRC functions, including but not limited to, eligibility functions, information and assistance, and benefits counseling; and
 - viii. Assist in the process to resolve disputes or conflicts among the various partner agencies involved in the project.

- B. The State shall be responsible for approving in advance all marketing activities including but not limited to billboards, newsletters, notices, newspaper ads or any other media distributed statewide relating or pertaining to the ADRC.
- C. Training: KDADS shall have the responsibility for conducting training related to KDADS forms/programs related to certification or processes for assessors.
- D. ADRC Website
- E. The State shall make available the Management Information Systems necessary to support all ADRC functions.
- F. The State shall be responsible for payment of completed services to the ADRC.
 - i. Payments shall be distributed by the 20th of the month following date of service.
 - ii. All data entry must be submitted in the state's MIS by the 10th of month following the date of service if it is to be paid by the 20th.
 - 1. Exception: Assessments on the "Medicaid Pending List" that are waiting for a determination by DCF. If no determination is made by the 90th day from the date of the Assessment, payment shall be provided to the ADRC as described in Section IX.E.2.
 - 2. Data entry for completed services shall be completed within five (5) business days from the date of the completed service and entered no later than the end of the third month following the month in which the service occurred. For example, if an assessment occurred in June, data entry must be complete by September 30. No payment shall be made in which data entry has not timely occurred.
 - 3. If the ADRC discovers that a second assessment has been completed on a consumer within the 365 day time period, the ADRC shall make a note of duplication in the KAMIS "Case Log" feature and contact the assessor to withdraw the second assessment. The parties agree that the KDADS may recoup any amount paid for the second assessment.
 - 4. The Parties agree that no payment shall be made for any assessment in which a proper HIPAA Authorization form has not been executed by the proposed consumer.

X. MISCELLANEOUS

- A. The parties agree that the toll-free phone number, website, logo and any other depiction or image, whether written, oral, electronic, or otherwise, as the same exists in the State of Kansas, shall be the sole and exclusive property of the KDADS.
- B. Signatures: This Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the parties hereto as if they were originals.
- C. Terms Read and Understood: The signatories to this Agreement certify that they have read this Agreement, have had opportunity to confer with counsel and fully understand all of the terms. The parties acknowledge and represent that they enter into this Agreement of their own free will, and not from any representation, commitment, promise, pressure or duress from any other party.
- D. Cooperation: The parties agree to fully cooperate with each other in the performance

hereunder, and shall execute such additional agreements, documents, or instruments, if any, as may reasonably be required to carry out the intent of the Agreement.

- E. Waiver of Breach: Waiver of a breach in performance of any term of this Agreement by KDADS shall not be construed as a waiver of any subsequent breach of the same or any other performance or provision of this Agreement.
- F. CMS Policies: In the event the Centers for Medicare and Medicaid Services ("CMS") enact(s) or amend(s) regulations and/or policies which affects the terms of this contract, the parties agree to cooperate regarding various options including the amendment of the contract.
- G. Visual Aids/Flow Charts: KDADS will use its best efforts to develop and provide visual aids and flowcharts for complex processes. Such flow chart or visual process shall, however, be solely for clarification and shall not supersede current federal and/or State of Kansas statutes, regulations, policies, or Contract provisions.
- H. Technical Assistance. For technical assistance on program questions, the ADRC, its subcontractors or independent contractors shall contact the appropriate program staff at the KDADS. If, however, following such contact further clarification is required, the person making the inquiry shall contact the respective KDADS' Program Director and/or Commissioner.
- I. Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- J. Prior Negotiations. This Agreement supersedes all prior negotiations and agreements between the Parties relative to the transaction and services contemplated by this Agreement, which contains the entire understanding of the Parties. The Agreement may only be modified or amended as provided herein.
- K. Choice of Law. The terms and provisions of this Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. In the event judicial intervention becomes necessary, the Parties agree that such action shall be filed in the District Court of Shawnee County, Kansas.
- L. No Mere Recitals. Each term of this Agreement is contractual, and not merely a recital.
- M. No Construction Against Any Party. Each party has cooperated in the drafting and preparation of this Agreement. Hence, if any construction is to be made to this Agreement, the same shall not be construed for or against any party.
- N. Entire Agreement. This Agreement supersedes, in all respects all prior written and/or oral agreements or communications between the Parties hereto relating to the matters covered hereby.
- O. Descriptive Headings. Paragraph heading contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limited the scope, extent or intent of this Agreement or any provision thereof.
- P. State of Kansas Contractual Provisions Attachment Incorporated. The Parties acknowledge and understand that all of the provisions in the Contractual Provisions Attachment, a copy of

which is attached hereto as Appendix ___, Form DA-146a (Rev. 6/12), that are applicable or the transaction contemplated by this Agreement, shall be incorporated into and made a part of this Agreement as if fully recited herein.

- Q. Amendment or Assignment. Modification or amendment to this Agreement shall be in writing and executed with the same formality as the original. Similarly, this Agreement shall not be assigned unless approved in writing by the Parties hereto. All assignments not approved pursuant to this provision are void.
- R. Signatures. This Agreement (and any amendments, modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.
- S. Terms Read and Understood. The signatories to this Agreement certify that they have read this Agreement, have had opportunity to confer with counsel and fully understand all of the terms. The Parties acknowledge and represent that they enter into this Agreement of their own free will, and not from any representation, commitment, promise, pressure or duress from any other party.
- T. Time is of the Essence. The Parties agree that time is of the essence in this Agreement.
- U. Default or Remedies. In addition to remedies contained elsewhere in this Agreement, if contractor fails to timely perform any requirement or provision of this Agreement, KDADS may take any action or seek any remedy authorized by law or by this Agreement including, but not limited to, the following: termination of this Agreement, or delay of payments to Contractors while KDADS verifies the extent of Contractor's performance or nonperformance.

ⁱ The term ADRC shall mean the SWKAAA and the collaborating agencies.

ⁱⁱ For purposes herein, the term "Collaborating Agencies" shall mean the following Area Agencies on Aging who have contracted with the ADRC to provide services required under this Contract: Wyandotte-Leavenworth Area Agency on Aging, Central Plains Area Agency on Aging, Northwest Kansas Area Agency on Aging, Jayhawk Area Agency on Aging, Southeast Kansas Area Agency on Aging, East Central Kansas Area Agency on Aging, North Central Flint Hills Area Agency on Aging, Northeast Kansas Area Agency on Aging, South Central Kansas Area Agency on Aging and the Johnson County Area Agency on Aging.

ⁱⁱⁱ For purposes herein, the term "Subcontractor" shall mean any entity and/or person who has entered into a written agreement with either the ADRC or one or more of the Collaborative Agencies.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the First day of October, 2014.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Cost Sheet

| <u>Service</u> | <u>Cost</u> | <u>Frequency</u> |
|---|-------------|------------------|
| Information, Referral and Assistance | \$68,376 | Per Month |
| Option Counseling | \$35 | Per Session* |
| CARE Level 1 Assessment | \$90 | Per Assessment^ |
| HCBS/FE, PD, TBI, PACE, MFP Assessments | \$90 | Per Assessment** |
| WORK/Working Healthy Assessments | \$200 | Per Assessment^^ |

* Option Counseling session referenced in the contract, as specifically defined in Section III.Q.

^ CARE Level 1 Assessment process as outlined in the CARE Policy Manual.

** Functional Medicaid Assessment process referenced in the contract as specifically defined in Sections III.R.

^^ WORK/Working Health Assessment process as defined by the WORK Program Manual referenced in III.R.iii, iv.3.

Subject to the terms and conditions of the bid specifications and this contract, State hereby accepts the offer of ADRC as expressed by ADRC's bid submitted to the Procurement and Contracts on April 3, 2012, in response to *Bid Event Number* EVT0001255.

It is understood and agreed by the parties that pursuant to the bid, ADRC agrees to furnish Aging and Disability Resource Center for the Kansas Department for Aging and Disability Services on order of the Agency(s) at the price or prices contained herein.

This contract is made effective the 1st day of October, 2014 by and between the State of Kansas (State) and Southwest Kansas Area Agency on Aging, Dodge City, KS (ADRC).

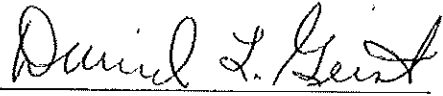
ADRC: Southwest Kansas Area Agency on Aging

Agency: Kansas Department for Aging and Disability Services

By: 

Printed Name: Kai M. Bruffett

Title: Secretary


By: 

Printed Name: David L. Geist

Title: Executive Director

I hereby certify that the competitive bid/procurement laws of the State of Kansas have been followed.

State of Kansas

By: 

Tracy L. Diel, Esq.
DIRECTOR OF PURCHASES